

1 ADVANCED DISABILITY ADVOCATES

2 Kevin Hong (SBN 299040)
3 3010 Wilshire Blvd. #516
4 Los Angeles, CA 90010
5 Telephone: (310) 926-2519
6 Facsimile: (310) 634-1258
7 adadvocates@gmail.com

8 Attorneys for Plaintiff
9 VICTORINO CASTILLO

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 VICTORINO CASTILLO,

15 Plaintiff,

16 vs.

17 GEORGE TZANIDIS d/b/a DOUGLAS
18 CHARBROILED BURGERS; and DOES
19 1 through 10 inclusive,
20 Defendants.
21
22
23
24

Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF
AMERICAN'S WITH DISABILITIES;
CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT; CALIFORNIA'S
DISABLED PERSONS ACT;
CALIFORNIA HEALTH & SAFETY
CODE; NEGLIGENCE

25 Plaintiff VICTORINO CASTILLO ("Plaintiff") complains of Defendants
26 GEORGE TZANIDIS d/b/a DOUGLAS CHARBROILED BURGERS; and DOES 1
27 through 10 inclusive ("Defendants") and alleges as follows:
28

PARTIES

1
2 1. Plaintiff is a California resident with a physical disability. Plaintiff is
3 substantially limited in his ability to walk. Plaintiff is an amputee who requires the use of
4 a wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for DOUGLAS
7 CHARBROILED BURGERS (“Business”) located at or about 16306 Pioneer Blvd.,
8 Norwalk, California.

9 3. The true names and capacities, whether individual, corporate, associate or
10 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
11 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
12 Court to amend this Complaint when the true names and capacities have been
13 ascertained. Plaintiff is informed and believes and, based thereon, alleges that each such
14 fictitiously named Defendants are responsible in some manner, and therefore, liable to
15 Plaintiff for the acts herein alleged.

16 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
17 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
18 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
19 the things alleged herein was acting with the knowledge and consent of the other
20 Defendants and within the course and scope of such agency or employment relationship.

21 5. Whenever and wherever reference is made in this Complaint to any act or
22 failure to act by a defendant or Defendants, such allegations and references shall also be
23 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
24 and severally.

JURISDICTION AND VENUE

25
26 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
27 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
28 *seq.*)

1 7. Pursuant to pendant jurisdiction, attendant and related causes of action,
2 arising from the same nucleus of operating facts, are also brought under California law,
3 including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1,
4 54, 54., 54.3 and 55.

5 8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

6 9. Venue is proper in this court pursuant to 28 USC §1391(b). The real
7 property which is the subject of this action is located in this district, in Norwalk, Los
8 Angeles County, California, and that all actions complained of herein take place in this
9 district.

10 **FACTUAL ALLEGATIONS**

11 10. On or about February 2, 2017, Plaintiff went to the Business. On or about
12 March 16, 2017, Plaintiff returned to the Business.

13 11. The Business is a fast food restaurant business establishment, open to the
14 public, a place of public accommodation and affects commerce through its operation.

15 12. While attempting to enter the Business during each visit, Plaintiff personally
16 encountered a number of barriers that interfered with his ability to use and enjoy the
17 goods, services, privileges, and accommodations offered at the Business.

18 13. To the extent of Plaintiff's personal knowledge, the barriers at the Business
19 included, but were not limited to, the following:

- 20 a. Defendants failed to comply with comply with the federal and state
21 standards for the parking space designated for persons with
22 disabilities. Defendants failed to post required signage such as "Van
23 Access" or "Unauthorized Parking."
24 b. Defendants failed to maintain the parking space designated for
25 persons with disabilities to comply with the federal and state
26 standards. Defendants failed to provide proper van accessible space
27 designated for the persons with disabilities.
28

- 1 c. Defendant failed to maintain the parking space designated for persons
2 with disabilities to comply with the federal and state standards.
3 Defendants failed to provide the access aisles with level surface
4 slopes.
- 5 d. Defendants failed to comply with the federal standard for the
6 restroom. The restroom was not accessible and violated various
7 American with Disability Act Accessibility Guideline (“ADAAG”) requirements, including but not limited to:
8
9 (i) adequate turning space;
10 (iii) Placement of grab bars.

11 14. These barriers and conditions denied Plaintiff the full and equal access to the
12 Business and caused him difficulty and frustration. The Business is conveniently located.
13 Plaintiff wishes to return and patronize the Business, however, Plaintiff is deterred from
14 visiting the Business because his knowledge of these violations prevents him from
15 returning until the barriers are removed.

16 15. Based on the violations, Plaintiff alleges, on information and belief, that
17 there are additional barriers to accessibility at the Business after further site inspection.
18 Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-
19 Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008).

20 16. In addition, Plaintiff alleges, on information and belief, that Defendants
21 knew that particular barriers render the Business inaccessible, violate state and federal
22 law, and interfere with access for the physically disabled.

23 17. At all relevant times, Defendants had and still have control and dominion
24 over the conditions at this location and had and still have the financial resources to
25 remove these barriers without much difficulty or expenses to make the Business
26 accessible to the physically disabled in compliance with ADDAG and Title 24
27 regulations. Defendants have not removed such barriers and have not modified the
28 Business to conform to accessibility regulations.

FIRST CAUSE OF ACTION

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990

18. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. *See* 42 U.S.C. § 12182(a).

20. Discrimination, *inter alia*, includes:

- a. A failure to make reasonable modification in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii).
- c. A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an

establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

- d. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path or travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope. 42 U.S.C. § 12183(a)(2).

21. Where parking spaces are provided, accessible parking spaces shall be provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall be van parking space. 2010 ADA Standards § 208.2.4.

22. Under the ADA, the method and color of marking are to be addressed by State or local laws or regulations. *See* 36 C.F.R., Part 1191. Under the California Building Code (“CBC”), the parking space identification signs shall include the International Symbol of Accessibility. Parking identification signs shall be reflectorized with a minimum area of 70 square inches. Additional language or an additional sign below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A parking space identification sign shall be permanently posted immediately adjacent and

1 visible from each parking space, shall be located with its centerline a maximum of 12
2 inches from the centerline of the parking space and may be posted on a wall at the
3 interior end of the parking space. *See* CBC § 11B-502.6, *et seq.*

4 23. Moreover, an additional sign shall be posted either in a conspicuous place at
5 each entrance to an off-street parking facility or immediately adjacent to on-site
6 accessible parking and visible from each parking space. The additional sign shall not be
7 less than 17 inches wide by 22 inches high. The additional sign shall clearly state in
8 letters with a minimum height of 1 inch the following: "Unauthorized vehicles parked in
9 designated accessible spaces not displaying distinguishing placards or special license
10 plates issued for persons with disabilities will be towed always at the owner's expense..."
11 *See* CBC § 11B-502.8, *et seq.*

12 24. Here, Defendants failed to provide signs stating "Van Accessible."
13 Moreover, Defendants failed to provide the additional sign with the specific languages
14 stating "Unauthorized vehicles parked in designated accessible spaces not displaying
15 distinguishing placards or special license plates issued for persons with disabilities will
16 be towed always at the owner's expense..."

17 25. For the parking spaces, access aisles shall be marked with a blue painted
18 borderline around their perimeter. The area within the blue borderlines shall be marked
19 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting
20 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall
21 be painted on the surface within each access aisle in white letters a minimum of 12 inches
22 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §
23 11B-502.3.3.

24 26. Here, Defendants failed to properly maintain the access aisles. Defendants
25 failed to paint "NO PARKING" on the surface within each access aisle.

26 27. Under the 1991 Standards, parking spaces and access aisles must be level
27 with surface slopes not exceeding 1:50 (2%) in all directions. 1991 Standards § 4.6.2.
28 Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50

1 (2%) in all directions. 1991 Standards § 4.6.3. Under the 2010 Standards, access aisles
2 shall be at the same level as the parking spaces they serve. Changes in level are not
3 permitted. 2010 Standards § 502.4. “Access aisles are required to be nearly level in all
4 directions to provide a surface for wheelchair transfer to and from vehicles.” 2010
5 Standards § 502.4 Advisory. *Id.* No more than a 1:48 slope is permitted. 2010 Standards
6 § 502.4.

7 28. Here, Defendants failed to provide the access aisles that were level with the
8 parking spaces.

9 29. The turning space shall be a space of 60 inches (1525 mm) diameter
10 minimum. The space shall be permitted to include knee and toe clearance complying with
11 306. 2010 ADA Standards § 304.3.1 A clear floor space 30 in by 48 in (760 mm by
12 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward
13 approach. Such clear floor space shall adjoin or overlap an accessible route and shall
14 extend a maximum of 19 in (485 mm) underneath the lavatory. 1991 ADA Standards §
15 4.19.3.

16 30. Here, Defendants failed to comply with the federal standard by failing to
17 provide adequate the turning space of minimum 60 inches in the restroom.

18 31. The side wall grab bar shall be 42 inches (1065 mm) long minimum, located
19 12 inches (305 mm) maximum from the rear wall and extending 54 inches (1370 mm)
20 minimum from the rear wall. 2010 ADA Standards § 604.5.1. The rear wall grab bar
21 shall be 36 inches (915 mm) long minimum and extend from the centerline of the water
22 closet 12 inches (305 mm) minimum on one side and 24 inches (610 mm) minimum on
23 the other side. 2010 ADA Standards § 604.5.2.

24 32. Here, Defendants failed to properly install the grab bars in the restroom.

25 33. A public accommodation shall maintain in operable working condition those
26 features of facilities and equipment that are required to be readily accessible to and usable
27 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

1 34. By failing to maintain the facility to be readily accessible and usable by
2 Plaintiff. Defendants are in violation of Plaintiff's rights under the ADA and its related
3 regulations.

4 35. The Business has denied and continues to deny full and equal access to
5 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
6 discriminated against due to the lack of accessible facilities, and therefore, seeks
7 injunctive relief to alter facilities to make such facilities readily accessible to and usable
8 by individuals with disabilities.

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

11 36. Plaintiff incorporates by reference each of the allegations in all prior
12 paragraphs in this complaint.

13 37. California Civil Code § 51 states, "All persons within the jurisdiction of this
14 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
15 national origin, disability, medical condition, genetic information, marital status, sexual
16 orientation, citizenship, primary language, or immigration status are entitled to the full
17 and equal accommodations, advantages, facilities, privileges, or services in all business
18 establishments of every kind whatsoever."

19 38. California Civil Code § 52 states, "Whoever denies, aids or incites a denial,
20 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable
21 for each and every offense for the actual damages, and any amount that may be
22 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
23 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
24 attorney's fees that may be determined by the court in addition thereto, suffered by any
25 person denied the rights provided in Section 51, 51.5, or 51.6.

26 39. California Civil Code § 51(f) specifies, "a violation of the right of any
27 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
28 shall also constitute a violation of this section."

1 case less than one thousand dollars (\$1,000) and any attorney's fees that may be
 2 determined by the court in addition thereto, suffered by any person denied the rights
 3 provided in Section 54, 54.1, and 54.2.

4 45. California Civil Code § 54(d) specifies, "a violation of the right of an
 5 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also
 6 constitute a violation of this section, and nothing in this section shall be construed to limit
 7 the access of any person in violation of that act.

8 46. The actions and omissions of Defendants alleged herein constitute a denial
 9 of full and equal accommodation, advantages, and facilities by physically disabled
 10 persons within the meaning of California Civil Code § 54. Defendants have
 11 discriminated against Plaintiff in violation of California Civil Code § 54.

12 47. The violations of the California Disabled Persons Act caused Plaintiff to
 13 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
 14 statutory damages as specified in California Civil Code §55.56(a)-(c).

15 **FOURTH CAUSE OF ACTION**

16 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

17 48. Plaintiff incorporates by reference each of the allegations in all prior
 18 paragraphs in this complaint.

19 49. Plaintiff and other similar physically disabled persons who require the use of
 20 a wheelchair are unable to use public facilities on a "full and equal" basis unless each
 21 such facility is in compliance with the provisions of California Health & Safety Code §
 22 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
 23 provisions of California Health & Safety Code § 19955 et seq.

24 50. The purpose of California Health & Safety Code § 1995 et seq. is to insure
 25 that public accommodations or facilities constructed in this state with private funds
 26 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
 27 Title 1 of the Government Code. The code relating to such public accommodations also
 28 require that "when sanitary facilities are made available for the public, clients, or

1 employees in these stations, centers, or buildings, they shall be made available for
2 persons with disabilities.

3 51. Title II of the ADA holds as a “general rule” that no individual shall be
4 discriminated against on the basis of disability in the full and equal enjoyment of goods
5 (or use), services, facilities, privileges, and accommodations offered by any person who
6 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
7 Further, each and every violation of the ADA also constitutes a separate and distinct
8 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
9 award of damages and injunctive relief pursuant to California law, including but not
10 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

11 **FIFTH CAUSE OF ACTION**

12 **NEGLIGENCE**

13 52. Plaintiff incorporates by reference each of the allegations in all prior
14 paragraphs in this complaint.

15 53. Defendants have a general duty and a duty under the ADA, Unruh Civil
16 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
17 to the Plaintiff.

18 54. Defendants breached their duty of care by violating the provisions of ADA,
19 Unruh Civil Rights Act and California Disabled Persons Act.

20 55. As a direct and proximate result of Defendants’ negligent conduct, Plaintiff
21 has suffered damages.

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
25 Defendants as follows:

26 1. For preliminary and permanent injunction directing Defendants to comply
27 with the Americans with Disability Act and the Unruh Civil Rights Act;
28

2. Award of all appropriate damages, including but not limited to statutory damages, general damages and treble damages in amounts, according to proof;
3. Award of all reasonable restitution for Defendants' unfair competition practices;
4. Reasonable attorney's fees, litigation expenses, and costs of suit in this action;
5. Prejudgment interest pursuant to California Civil Code § 3291; and
6. Such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: July 12, 2017

ADVANCED DISABILITY ADVOCATES

By: /s/ Kevin Hong
Kevin Hong, Esq.
Attorneys for Plaintiff